IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21769 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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KAVO @ KALKAPRASAD @ DINESH RAMESHBHAI KAHAR - Petitioner(s)

Versus

COMMISSIOENER OF POLICE & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 12/01/2006

ORAL JUDGMENT

1. Kavo @ Kalkaprasad @ Dinesh Rameshbhai Kahar, petitioner-detenu has filed this habeas corpus petition

under Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 8/10/2005 passed by the Police Commissioner, Vadodara under the provisions of PASA Act. Petition was filed on 13/10/2005. On 26/10/2005, this Court (Coram:A.S.Dave, J.) has issued rule which is returnable after four weeks. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. Therefore, with consent of parties, matter has been placed for final hearing today before this Court.

2.Ms.Banna Dutta, learned advocate appears for the petitioner-detenu. The learned counsel has invited my attention to the order of detention dated 8/10/2005 passed by the authority under the provisions of PASA Act. She has also invited my attention to the order of committal dated 8/10/2005 by which petitioner-detenu has been sent to Jamnagar jail on the same day. The learned advocate has also invited my attention to the grounds supplied by the authority to the petitioner-detenu. From the grounds of detention, it revels that petitioner-detenu has committed following offences:

1. Offence registered at Panigate Police Station in connection with Cr. Case No.427 of 2004 dated 5/11/2004

under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner has stored 18 (eighteen) liters of country liquor valued at Rs.360/- and one scooter.

2. Offence registered at Panigate Police Station in connection with Cr. Case No.73 of 2005 dated 19/2/2005 under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner has stored 40 (forty) liters of country liquor valued at Rs.800/- and one motor cycle.

3. Offence registered at Panigate Police Station in connection with Cr. Case No.135 of 2004 dated 29/3/2005 under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner has stored 99 (ninety nine) liters of country liquor valued at Rs.1,980/- and one scooter.

4. Offence registered at Panigate Police Station in connection with Cr. Case No.199 of 2004 dated 4/5/2005 under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner has stored 105 (one hundred and five) liters of country liquor valued at Rs.2,100/- and one motor

cycle.

5. Offence registered at Panigate Police Station in connection with Cr. Case No.327 of 2005 dated 7/9/2005 under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner has stored 45 (forty five) liters of country liquor valued at Rs.900/- and one motor cycle.

3. It was also alleged that petitioner is carrying on an anti social activities as carrying on business of liquor and therefore, he is 'bootlegger' under the provisions of the PASA Act as the activities of the petitioner affects the public health in this behalf.

4. The learned advocate for the petitioner stated that even if all these grounds which has been stated in the show cause notice taken together, it only revels that petitioner has committed ordinary offences under the provisions of Prohibition Act. Therefore, there may be violation of law and order situation but there is no question of violation of public order. The learned advocate for the petitioner has stated that the authority has not properly arrived at subjective satisfaction in this behalf. In support of the same,

the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta and also relied upon judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in Letters Patent Appeal 223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana and judgment of the Division Bench of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order of detention. He has filed affidavit of Deepak Swaroop. It is stated in the affidavit that petitioner is illegally storing and selling the liquor and liquor is injurious to health and by drinking it, it will cause health hazard in general public and therefore, after satisfying, the order of detention is passed which is just, legal and proper.

6. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any

credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana (supra) and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal cases under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life

of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta,J.) in the case of Ashokbhai Jivrajbhai and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all

these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Kavo @ Kalkaprasad @ Dinesh Rameshbhai Kahar, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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